No. 03-1500

IN THE

# Supreme Court of the United States

THOMAS VAN ORDEN,

*Petitioner*,

v.

RICK PERRY,
IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS
AND CHAIRMAN, STATE PRESERVATION BOARD, ET AL.,

*Respondents*.

**On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## BRIEF FOR THE ETHICS AND PUBLIC POLICY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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## QUESTION PRESENTED

Whether a large monument, 6 feet high and 3 feet wide, presenting the Ten Commandments, located on government property on the walkway between the Texas State Capitol and the Texas Supreme Court, is an impermissible establishment of religion in violation of the First Amendment.

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## BRIEF FOR THE ETHICS AND PUBLIC POLICY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

### INTEREST OF *AMICUS CURIAE*[1]

The Ethics and Public Policy Center (EPPC) was established in 1976 to clarify and reinforce the bond between the Judeo-Christian moral tradition and the public debate over domestic and foreign policy issues. Its programs include research, writing, publication, and conferences.

EPPC affirms the political relevance of the great Western ethical imperatives—respect for the dignity of every person, individual freedom and responsibility, justice, the rule of law, and limited government. It maintains that moral reasoning is an essential complement to empirical calculation in the shaping of public policy.

EPPC is concerned that the Court's decision in this case (and in the companion case arising from the Sixth Circuit) could remove an important component of our moral tradition from the public spaces of our Nation. The Ten Commandments, which embody the ethical underpinnings of Western civilization and serve as an important historical foundation for our criminal and civil laws, are frequently displayed or depicted in public places or on public grounds. EPPC believes that such displays properly acknowledge and invoke our history and traditions.

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[1] Pursuant to this Court's Rule 37.3(a), letters of consent from all parties to the filing of this brief have been filed with the Clerk. Pursuant to Rule 37.6, *amicus* states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

## ARGUMENT

Petitioner and his like-minded friends at the ACLU and similar organizations would have this Court order the removal, defacement, or destruction of a symbolic monument that stands, as it has for many years, on the grounds of the Texas State Capitol, solely because the monument depicts the Ten Commandments that (according to the tradition of the world's major religions) God delivered to Moses for the edification of human civilization. Petitioner's request, although wrapped in the garb of the First Amendment, is in fact emblematic of a pernicious brand of intolerance for religion's role in American public life. By asking this Court to declare that the Texas monument and similar displays throughout our Nation offend the Constitution, petitioner seeks nothing less than a radical transformation of our national identity—from a land founded on and devoted to religious liberty and free expression to a place, unrecognizable to our forebears, where the merest public nod toward religious history or beliefs would be *verboten*.

The constitutional arguments have been fully briefed in this case and need not be repeated here. It suffices to say that whether the test is establishment or promotion, entanglement or endorsement, the public display of the Ten Commandments offends no First Amendment doctrine previously articulated by this Court. Rather than rehash the legal framework in which this decision will be made, EPPC respectfully submits this brief to address the *practical* ramifications of petitioner's challenge.

Religious iconography is an integral part of American public architecture. *See, e.g.*, Brief for United States in No. 03-1693 at 11, 1a-6a; Brief for American Center for Law and Justice in No. 03-1693 at 16-19. Symbols such as the Ten Commandments represent the will of the people as reflected in the halls in which they have chosen to install their respective governments. The Texas monument is neither unique nor isolated; to the contrary, the Decalogue motif has been

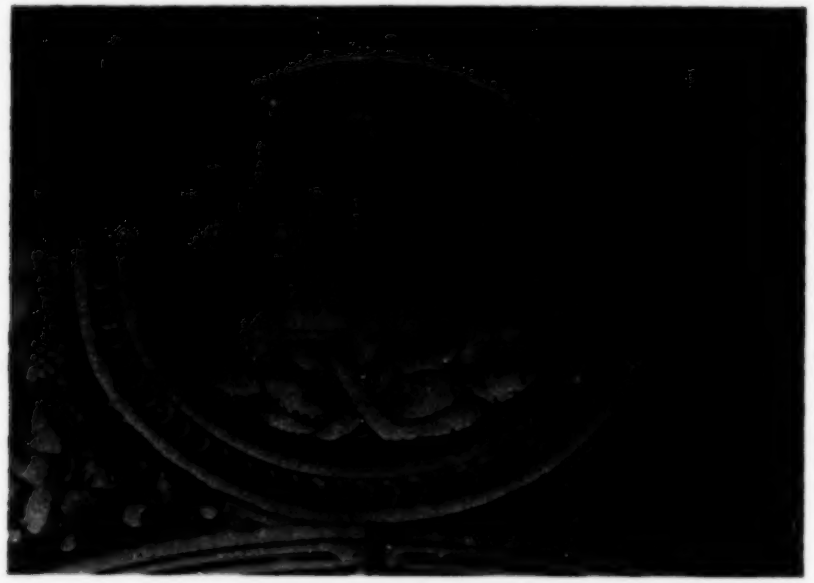


incorporated time and again by the artists and architects responsible for designing the halls of American government.

For example, in the Main Reading Room of the Library of Congress stands a large bronze statue of Moses holding the Ten Commandments:

This prominent statue is on display for the one million people who visit the Library of Congress each year. Similarly, the recently completed Ronald Reagan International Trade Building features a very large statue with the Ten Commandments that is visible to all who pass along Pennsylvania Avenue:

And the millions of visitors to the National Archives pass over a bronze plaque inscribed with the Decalogue tablets:



Indeed, Decalogue imagery graces the homes of all three Branches of our federal government. Moses and the Ten Commandments appear on both the south frieze of the courtroom in which this Court sits and the pediment of the Court's building:

The traditional incorporation of the Ten Commandments and similar symbols into America's public architecture is a reflection and recognition of our cultural heritage and history—a long-standing practice of religious *tolerance* that acknowledges the cultural role of religious allegory without compelling anyone to adhere to a particular belief system. In the case of the Ten Commandments, for example, this iconography serves to remind us that the most fundamental tenets of Anglo-American law—the basic prohibitions against murder, theft, and the like—have roots that reach back to the dawn of recorded history.[2]

This established practice of integrating the Ten Commandments and other religio-historical symbols into the fabric of our public institutions has been repeated over and over again in the multitudinous town halls, public parks, courthouses, educational institutions, and state capitals throughout this Nation. In statues, paintings, sculptures, friezes, murals, and the like, religious iconography has been part and parcel of American public architecture since the Founding. It is fair to say that the inclusion of such iconography is the norm rather than the exception.[3]

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[2] It is for this reason that Moses and the Ten Commandments often appear in the company of other lawgivers, such as Hammurabi or Mohammed. But with or without such "contextual" icons, the Ten Commandments are sufficiently integral to our shared history and traditions to stand unchallenged as a proper element of American public architecture.

[3] The images reproduced in this brief come from a photographic essay that vividly captures the prominence and prevalence of religious symbols in and around public buildings in the District of Columbia *alone*. *See* Carrie Devorah, *God in the Temples of Government*, Human Events, Nov. 24, 2003, at 14, & Dec. 22, 2003, at 20. In addition to these photographs, Ms. Devorah has accumulated numerous other examples of religious iconography on public properties that will be published in a forthcoming book. An illustrative, but by no means exhaustive, list of government properties outside of the District of Columbia that contain Ten Commandments monuments can be found in the appendix to the brief for the United States in the companion case.

This Court is not the appropriate body to revisit more than two centuries of architectural history by ordering the wholesale removal or destruction of symbols—including particularly representations of Moses and the Ten Commandments—that have heretofore been regarded, correctly, as important parts of our collective experience warranting recognition in and around the public spaces of our Nation. The Court should resist petitioner's invitation to sit as the Supreme Board of Architectural Review, with authority to override the public's decisions regarding the appropriate symbology, reflecting our long and varied traditions, with which to ornament government places.

Petitioner seeks to outlaw, as unduly "religious," a historical tradition that unquestionably has contributed to the legal and ethical foundations of this Nation and that the finest architects in the Republic have seen fit to include as part of our collective story. A finding that such symbology violates the First Amendment would unprecedentedly, and unnecessarily, remove an important element of our cultural heritage from the public realm, causing great loss to future generations as they seek to appreciate America's rich and pluralistic history.

And the intolerant fervor of petitioner and his confreres does not stop at the Ten Commandments. Recent months have seen attacks on a cross at a World War I memorial in the Mojave National Preserve, a cross in the official seal of Los Angeles County, and the tradition of offering prayers at the Presidential inauguration. The Pledge of Allegiance, with its reference to God, has but recently been before this Court; and our currency continues to refer to the national trust in a deity. The present effort to eradicate Ten Commandments iconography is merely one piece of an overall strategy to eradicate all such references to religion from our public life.

Implementing the counter-historical regime that petitioner posits would require this Court to authorize, if not compel, a phalanx of bulldozers, jackhammers, chisels, sandblasters, and other instruments of destruction to wipe out all



references to religious history from American public buildings. An order requiring the removal of the Ten Commandments monument from the grounds of the Texas statehouse would be but a sliver removed from a directive to remove the Decalogue emblem from the doors of this Court:

A holding that the First Amendment proscribes the display of the Ten Commandments on public property could—and, if petitioner and the ACLU have their way, would—lead to the desecration of every public building that contains a sculpture, frieze, engraving or other representation of the fundamental law.

History has not looked kindly on those who would deny or destroy their heritage—religious or otherwise—and the Court's decision in this case will be judged in the sharp light of history by generations to come. The Court is now being asked to decide whether it is possible to preserve and respect our cultural and religious artifacts, as incorporated into the public architecture of our country, without the government's having been deemed to have "established" a religion. The well-traveled path of tolerance and inclusion should lead the Court to answer that question in the affirmative, and, accordingly, to affirm the decision below.

## CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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